



# Legal Issues Regarding the “Mail-Only” Ballot

Elections Task Force  
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# The “All-Mail” Ballot

- Every voter in jurisdiction is provided with an absentee ballot
- Options: Mail it or drop it off at central location or Registrar’s Office



# **Elections Law for General Law and Charter Cities**

- General law cities:
  - Must follow state elections law
  
- Charter cities (San Diego):
  - Charter is “constitution” or “supreme law”
  - Can create own rules for municipal elections
  - Not bound by state law for municipal elections



# **State Elections Code: “General Law” Cities**

- State law applies only to “general law” cities conducting elections
- Will not allow “mail-only” ballots except in certain circumstances
  - Source: Cal. Elections Code sections 4000, *et seq.*



# **General Law Cities: When State Law Allows “Mail-Only”**

- One of the following:
  - No more than 1,000 registered voters
  - No more than 5,000 voters and election is to impose a special tax
  - Property or special tax measures, water bonds
  - Certain water districts exempt from Elections Code
  - Votes for certain assessments
  - Special districts (but used by school districts) (Elec. Code sec. 4018)



# When State Allows “Mail-Only”

- Election must be held on certain “mailed ballot” dates
  - Not on dates of California primary or general elections
- Examples:
  - 1st Tuesday after 1st Monday in May
  - Last Tuesday in August



# Examples of “All-Mail” Elections Under State Law

- Alpine and Sierra Counties:
  - All local, state and federal elections
    - Due to small population



# Charter Cities and “Mail-Only”

- San Diego can adopt own rules for local elections
- Conduct of municipal elections is a municipal affair and subject to municipal control
  - Election procedures in a Charter city are municipal affairs





# Charter Cities and “Mail-Only”

- When?
  - “Stand-alone” elections
    - District-only elections
    - Special elections (fill vacancies)
- Cannot occur with statewide primaries or federal elections if election is consolidated



# Consolidation with State and Federal Elections

- When held on same day as statewide election, may be consolidated
- If so, done in accordance with state law
  - Mandatory procedures: Cal. Elec. Code sec. 10400, *et seq.*
  - “Shall be regulated” in accordance with state law



# Consolidation with State and Federal Elections

- Why?
  - 93 jurisdictions voting in county in 11/04
  - Need “one set of rules” for all jurisdictions
  - Ex: Frye-Murphy Mayor’s Race
    - Interpretation of “bubbles”
- If consolidate, using state law, cannot use mail-only ballot



# **Requirements to Change San Diego's Voting System**

- City Council adopts implementing ordinance
- Amend Municipal Code
- Should not require Charter amendment
- But consider advisory vote of People



# Legislature's Consideration

- The all-mail ballot bill, AB 707
  - Attempted to pass before June 6 primary
  - Failed in committee
  - Supported by CA Assn. of Clerks and Elections Officials
- Uphill battle: Needs two-thirds majority



# Legislature's Consideration

- ☐ Would have provided option of all-mail ballot for June primary for any county
- ☐ Provided solution to challenge of implementing voting systems compliant with Help America Vote Act
- ☐ Required at least one drop off site in each city
- ☐ Required in-person voting opportunities at central office



# If State Law Changes

- An all-mail ballot law would allow additional discretion to Charter cities
- In consolidated election could use mail-only option



# Poll Tax Not An Issue

- **Question raised by ETF:**
  - ☐ Cannot force the voter to “mail”
  - ☐ Must be an alternative
    - Drop box
    - Bring to Registrar
- **But note: private person cannot offer to pay postage**
  - Could be treated as offer to pay someone to vote, violating federal law - 42 U.S.C. 1973(i)(c)





# Miscellaneous Legal Issues

## ■ Return of ballots:

- Law prohibits any absent voter's ballot to be returned by campaign worker
  - Fines, imprisonment
- Does allow voters, because of illness or disability, to have household member or relatives return it
- 6 days prior to election: Anyone authorized in writing by voter can pick up and return his or her ballot



# Miscellaneous Legal Issues

- **Late return of ballots**

- 8 p.m. deadline for ballots in hand

- **Privacy and undue influence**

- Peterson case

- Compelling interest to secure participation in vote applies to mail ballot
    - Secrecy provision of Cal. Constitution does not preclude voting by mail